

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DAVID A. SMILEY

Plaintiff,

C.A.No.I:07-005-SLR

V.

JURY TRIAL DEMANDED

UAW LOCAL 1183

Defendant

**ANSWER OF DEFENDANT
UAW LOCAL 1183
TO PLAINTIFF'S COMPLAINT**

The United Automobile, Aerospace, Agricultural Implement Workers of America (“UAW”) Local 1183 (“Local 1183” or the “Union”), through its undersigned counsel, hereby answers plaintiff’s “Amended” Complaint¹ as follows. Plaintiff has not numbered the paragraphs in the Complaint. The Union’s answers correspond to each of the allegations contained in the unnumbered paragraphs as though Plaintiff had actually numbered each paragraph.

1. Denied. Further, the Union filed a grievance on Plaintiff's behalf.
2. Denied. Further, the Union did attempt to represent Plaintiff.
3. No response is necessary. If a response is deemed necessary, the averments ph are denied.
4. Denied.

¹On September 27, 2007, Plaintiff moved to amend his Complaint to add the Union as a defendant. On April 8, 2008, Plaintiff “served” a copy of the Complaint, styled “Plaintiff David Smiley’s Complaint against defendant UAW Local 1183” by leaving a copy of the Complaint, without summons, at the Union’s office.

5. Denied. The Union properly investigated Plaintiff's termination from employment.

6. Denied. The Union has not breached its duty of fair representation to the Plaintiff.

7. Denied.

8. No response is necessary. If a response is deemed necessary, the averments in this paragraph are denied.

9. No response is necessary. If a response is necessary, the averments in this paragraph are denied.

10. No response is necessary. If a response is necessary, the averments in this paragraph are denied.

11. Denied.

12. Denied.

13. Denied.

14. No response is necessary. If a response is necessary, the averments in this paragraph are denied.

WHEREFORE, the Union respectfully requests that the complaint be dismissed in its entirety.

AFFIRMATIVE DEFENSES

1. The complaint fails to state claims upon which relief may be granted.

2. Plaintiff's claims are barred by the applicable statutes of limitations.

3. Plaintiff has failed to exhaust his administrative remedies by filing a charge of discrimination against the Union with the appropriate Agency and receiving a Right to Sue Notice prior to filing suit.

4. Plaintiff's state law claims are preempted by federal law.

5. Plaintiff failed to exhaust his administrative remedies with the Union.

WHEREFORE, Defendant UAW Local 1183 respectfully requests that the Complaint be dismissed with prejudice, with costs to be borne by Plaintiff.

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Dated: April 25, 2008